no other person — to do so. When the appellant was shown to be no longer compellable by the provisions of rule 26 to resort to the domestic forum, it must follow as a matter of course that he had to seek redress in the courts. Since the court declined cognisance of the dispute, the appellant was left without any remedy for his grievance, whether fancied or legitimate. This was the very reason why we considered it essential in the interests of justice to allow this appeal and restore the injunction. To quote Ungoed-Thomas J. in *Lawlor* v. *Union of Post Office Workers*: —[4]

"Trade union rules clearly cannot oust the jurisdiction of the courts. Contracts, including a contract constituted by trade union rules, may provide that recourse to domestic tribunals shall be exhausted before there is recourse to the courts, and the courts may recognise and give effect to that contract; but that does not oust its jurisdiction. So in this case, the court has jurisdiction, and here there is no contractual provision requiring domestic remedies to be exhausted before resort to the courts. ... This case involves the construction of the rules of the trade union, and it is for the courts, and not a domestic body, to decide questions of construction, as matters of law."

The respondent union might or might not be right in their interpretation of the rules and in deciding as they did at the emergency general meeting: but there are clearly questions of law which can be determined only at the trial of this action. The respondents accordingly were ordered to pay the costs of this appeal.

Gill & Ali F.JJ. concurred.

Order accordingly.

Solicitors: *Athi Nahappan & Co.; Naidu & Co.*

RE S.R.C. AUGUSTIN

[O.C.J. (Ong C.J.) July 28, 1972]

[Kuala Lumpur Petition for Admission and Enrolment as an Advocate and Solicitor No. 99 of 1971]

Advocate and Solicitor — Petition for admission — Whether petitioner a fit and proper person to be admitted to practice — Discretion of the court — Advocates and Solicitors Ordinance, 1947, s. 4.

The petitioner applied for admission as an advocate and solicitor and his petition was opposed. It appeared that the petitioner had been sentenced by the Thai Military Court in 1962 for carrying opium without legal authority. As a result of that conviction, he was subsequently dismissed from the police force in Malaysia. Since 1964 there was nothing known to the discredit of the petitioner and he had been called to the Bar in England in 1969.

Held: in the circumstances of this case, the court would exercise its discretion to allow the petition.

Case referred to:-

(1) *In re Weare* [1893] 2 Q.B. 439, 447.

PETITION.

N. Ramachandran for the petitioner.

Shiv Charan Singh for the Attorney-General.

N. Shankar for the Bar Council.

Raja Abdul Aziz Addruse for the Selangor Bar Committee.

Ong C.J.: Mr. Augustin's petition for admission and enrolment as an advocate and solicitor was strenuously opposed, not only by the Solicitor-General, but also by the Malayan Bar Council and the Bar Committee of Selangor, on the ground that he is not a fit and proper person to be admitted to practise.

Mr. Augustin joined the police force on May 1, 1946. He had attained the rank of Acting Deputy Superintendent of Police when dismissed on April 16, 1965, after having been suspended from duty on February 27, 1963. The ground for his dismissal was conduct prejudicial to the good name and integrity of the Royal Federation of Malaya Police. On November 19, 1962 he had been found, near Songkhla in South Thailand, carrying in his car approximately 400 lbs. of opium without lawful authority. For this offence against Thai law he was sentenced by the Military Court at Songkhla to 4 years imprisonment. However, in consideration of his past services to Thailand he recovered his freedom in January 1964. As he had committed no offence on Malayan soil, he could not be prosecuted in our courts, but was duly dismissed from the police force. The objection to this petition is based on the same facts which led to his dismissal by the Police Commission.

At the outset I must say that, in my opinion it is only right and proper that the objection should be raised and heard. Otherwise silence might have been taken for acquiscence to the petition being granted as a matter of course. Mr. Shiv Charan Singh, representing the Solicitor-General, Mr. Shankar appearing on behalf of the Bar Council, and Raja Abdul Aziz Addruse for the Selangor Bar Committee, have argued against the petition with considerable force, albeit with utmost fairness. It was a distasteful task to rake up another man's past, but they had a duty to discharge in the public interest and for the good name of an honourable profession. For the presentation of their case, with delicacy and restraint, I must express to each my sincere appreciation.

The objection raised was not in respect of a mere peccadillo but misconduct of a serious nature. The facts cannot be glossed over. There is the public interest to consider. The clients of a legal practitioner are often illiterate and simple people. Would Mr. Augustin be able to look after their interests with scrupulous honesty and fidelity? If not, what of the high reputation for integrity in the profession he seeks to enter? Would not the mere fact of his admission tarnish the reputation of the body as a whole? Would he be a risk I should not foist on a professional body against their will? Section 4 of the Advocates and Solicitors Ordinance leaves the decision entirely to my discretion. It would be a simple matter to follow Pontius Pilate and wash my hands of responsibility by letting the majority view prevail. But, would that be in exercise of my discretion or a shirking of my duty? I have accordingly taken time to ponder over my decision and its consequences.

The Bar Council, I note, have been divided in their opinion. Those members who would not oppose Mr. Augustin's admission must have realised, as I do myself, that to bar the door to Mr. Augustin this time

means in all probability that he will be denied admission for many years to come. If misconduct committed nearly ten years ago is today a good disqualification, then logically an ineradicable weakness of character should remain valid two years hence, or even ten. But was the lapse evidence of an incurable defect? The petitioner had undergone punishment in Thailand. In Malaya he had further suffered dismissal. All in all, it was an unforgettable lesson. The question is whether he had expiated in full for his lapse from rectitude, or do I take it on myself to mete out further retribution. Would it be right to blight any man's future prospects for ever? It is said that he can seek other employment. I believe prospective employers do generally require references. Mr. Augustin would naturally have to include his certificate of call to the English Bar. Inevitably would follow the disclosure that the court had considered his character to be such that it renders him unfit for admission to practice. Would any employer be more indulgent?

Mr. Ramachandran has drawn my attention to Article 48(1) of the Federal Constitution disqualifying from membership of either House of Parliament any person who "has been convicted of an offence by a court of law in the Federation and sentenced to imprisonment for a term of not less than one year or to a fine of not less than two thousand dollars and has not received a free pardon". The same Article, however, goes on to provide that such disqualification, if not removed by the Yang Dipertuan Agong, shall cease at the end of five years from the date of release from custody or imposition of the fine. Thus five years suffice to erase the past of any person running for a seat in Parliament. I do not say that the same period of five years should also apply to qualified persons petitioning for admission to the Bar. The circumstances of each case must be considered. Nevertheless, the principle that a disqualification does not hold good for all time is one which I consider just and proper. *In re Weare*[1] contains a passage in the judgment of Lord Esher M.R. which seems to me particularly apposite: —

"I know how terrible that is (striking a solicitor off the roll). It may prevent him from acting as a solicitor for the rest of his life; but it does not necessarily do so. He is struck off the roll; but if he continues a career of honourable life for so long a time as to convince the court that there has been a complete repentance, and a determination to persevere in honourable conduct, the court will have the right and the power to restore him to the profession."

The same considerations apply, in my opinion, to striking off the roll and refusing admission. It is entirely a question of character and fitness. On the file in support of Mr. Augustin's petition are certificates of his good character given by practitioners of several years' standing. His offence and conviction in the Thai Military Court had been reported on December 4, 1963 by the Attorney-General to the Inn of which he was admitted as a student in January 1961 — while still in the police force. The Treasurer was content, in view of the sentence served, to issue a warning that any future misconduct might lead to his being struck off the roll of students. The blot on his record did not obstruct his call to the Bar on November 26, 1969.

I am sure the Inns of Court are every bit as jealous of the honour of those admitted to the English Bar as are advocates and solicitors in Malaysia regarding the reputation of the legal fraternity. The objectors have freely conceded that nothing has been known to the discredit of Mr. Augustin since January 1964. For my own part I think that he has learnt a bitter lesson and there remains nothing more that he has to atone for. Should I dismiss this petition I would in effect be saying that he suffers from an incurable and ineradicable defect of character. I do not think one can safely be prophetic about the future conduct of anybody except drug addicts and habitual criminals. Nor do I think, quoting from Lord Lindley's judgment at page 477 in *Weare's* case, that "it would be a stretch of charity which would degenerate into absurd and ridiculous weakness" to consider the unhappy episode a closed chapter in Mr. Augustin's past. He must know that the future consequences of any misconduct will be visited with the severest sanctions. Where, in 1964 we had readmitted an advocate and solicitor struck off the rolls six years earlier, our trust and confidence has not been misplaced. I do not think Mr. Augustin will lightly abuse my trust. I shall accordingly allow this petition.

Petition allowed.

UNITED TEMIANG (F.M.S.) RUBBER ESTATES LTD. v. PERUMAL

[F.C. (Ong C.J., Gill and Ong Hock Sim F.JJ.) August 7, 1972]

[Kuala Lumpur — Federal Civil Court Appeal No. 35 of 1972]

Employment — Dismissal of labourer — Breaking of contract of service with employer — Absence from work for more than two days — Claim by employer for possession of house occupied by labourer free of rent — Employment Ordinance, 1955, s. 15(2).

The respondent and his wife had been employed as rubber tappers and the respondent had been allowed occupation of a house rent free. Subsequently, he and his wife were dismissed. Later the respondent's wife, who was in the family way, was re-employed on compassionate grounds. She ceased work upon her confinement and thereafter never reported for duty. The appellants claimed possession of the house. The trial judge dismissed the application as he held that the respondent's wife was a tenant of the house in her own right as an employee of the appellants and should have been joined as co-defendant. The appellants appealed.

Held: (1) as the respondent's wife had not reported for duty after she ceased work upon her confinement, she must be deemed to have broken her contract of employment with the appellants;

(2) neither the respondent nor his wife could claim to be still in the employment of the appellants and therefore the appellants were entitled to possession of the house.

FEDERAL COURT.

Leow Shin Fong for the appellants.

Karam Singh for the respondents.

Ong C.J.: The appellants on February 5, 1972 issued a writ against the respondent claiming possession of a house belonging to them which continues to be